IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

WP(C).No. 15766 of 2007(B)

PETITIONER:

K.D.SUKUMARAN, KALLEPPALLIL HOUSE,
PATHAMPUZHA P.O., MANNAM, POONJAR,
THEKKEKKARA.

BY ADV. SRI.J.S.AJITHKUMAR
SMT.SOUMINI JAMES
SRI.SERGI JOSEPH THOMAS

RESPONDENTS:

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1. **THE JOINT REGISTRAR (GENERAL) OF CO-OPERATIVE SOCIETIES, KOTTAYAM.**

2. **ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES, PALA.**

3. **THE MEENACHIL EAST URBAN CO-OPERATIVE BANK LTD.NO.4266, POONJAR, REPRESENTED BY ITS GENERAL MANAGER.**

BY ADV. SRI.SHAJI THOMAS PORKKATTIL, SC for R3
SRI.BINU PAUL for R3
BY GOVERNMENT PLEADER SMT. R.BINDU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF EXECUTION PETITION NO.41 OF 2005 DTD. 26/11/2005 FILED BY THE 3RD RESPONDENT BANK.

EXT.P2; COPY OF CIRCULAR NO.27/2006 OF THE 1ST RESPONDENT.

EXT.P3: COPY OF PETITION DTD. 30/06/2006 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT BANK.

EXT.P4: COPY OF PROFORMA WITH COVERING LETTER DTD. 31/08/2004.

EXT.P5: COPY OF COVERING LETTER ALONG WITH THE PROFORMA LETTER DTD. 21/10/2004.

EXT.P6: COPY OF NEWS ITEM IN MATHRUBHOOMI DAILY DTD.19/2/2006.

EXT.P7: COPY OF JUDGMENT DTD. 29/11/2006 IN WP(C) NO.19033/2006 (N) OF THIS HON'BLE COURT.

EXT.P8: COPY OF COMMUNICATION NO.H.4953/06-07 DTD. 12/02/2007 ISSUED BY THE 3RD RESPONDENT.

EXT.P9; COPY OF PETITION DTD. 7/04/2007 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXT.P10; COPY OF E.A.NO.17/07 DTD.11/04/2006 BEFORE THE ERATTUPETTA MUNSIFF'S COURT.

EXT.P10(A); COPY OF COUNTER DTD. 13/04/2007 FILED BY THE 3RD RESPONDENT IN E.A.16/2007.

EXT.P11: COPY OF E.A.NO.17/07 DTD. 12/04/2007 FILED BY THE PETITIONER.

EXT.P11(A); COPY OF OBJECTION DTD. 13/04/2007 FILED BY THE 3RD RESPONDENT.

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EXT.P12: COPY OF NOTICE OF THE MUNSIFF'S COURT, ERATTUPETTA IN E.P.41/2005 TO THE PETITIONER.

3RD RESPONDENT'S EXHIBIT:

EXT.R3(A); COPY OF THE DOCUMENT NO.2442/2005 DTD. 14/10/2005 OF POONJAR SRO.

/TRUE COPY/

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M.N. KRISHNAN, J.

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W.P.C. NO. 15766 OF 2007

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Dated this the 9th day of July, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside Ext.P12. Ext.P12 is a notice intimating the writ petitioner regarding the direction of the Court to Amin to deliver the property on 25.5.07. The only point that arises for consideration is whether there is any statutory protection for the writ petitioner against the Court sale and delivery of the property which belong to a scheduled tribe. There is no dispute that the writ petitioner belong to a scheduled tribe community. Equally there is no dispute that the writ petitioner has mortgaged the property with a co-operative society for raising a loan.

2. The learned counsel for the writ petitioner had brought my attention to Section 4 of the Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975 as well as Rule 5 of the said enactment. As per Section 4 notwithstanding anything contained in any other law, no scheduled tribe can alienate the property belonging to him other than a scheduled tribe without the previous consent in writing of a

competent authority. Under Rule 5 in execution of a money decree there cannot be any attachment of any immovable property except for the purpose of realization of the amount of maintenance and that the sale should be in favour of a scheduled tribe. Therefore, the learned counsel for the writ petitioner submits that the property held by him cannot be proceeded against and therefore there cannot be any sale much less delivery of the property.

3. The learned counsel for the 3rd respondent has invited my attention to Section 3 of the Act. It is an exemption clause. Under that clause, "Nothing contained in this Act shall apply to the mortgage, pledge or hypothecation of any immovable property by a member of a scheduled tribe in favour of a Co-operative Society registered or deemed to be registered under the Kerala Co-operative Societies Act, 1969 or a corporation or a nationalized bank or any other financing agency, not being a private agency or a money lender, as security for any loan advanced by such, society, corporation, bank or other agency". So, the intention of the legislation was to exclude from the purview of provisions mortgages, hypothecation etc. done by a scheduled tribe in favour of a Co-operative society or a

nationalized bank or other governmental agency. Now, in the case before me, admittedly the property has been mortgaged to a co -operative bank. The application of the enactment is exempted by virtue of Section 3(c) of said transaction. Therefore, Section 4 or Rule 5 will not be applicable to a transaction which falls under Section 3 is my view. When it is so the said property can be proceeded with by the Bank and the method adopted by the Bank to proceed against the mortgage property for sale cannot be found fault with. Since Section 4 or Rule 5 does not come to the rescue of the writ petitioner in the light of Section 3(c) I find the sale effected by the society cannot be set aside as it is not against the provisions as contended by the learned counsel for the writ petitioner. Therefore, there is no ground to set aside Ext.P12 notice and hence the writ petition is dismissed.

I make it very clear that there is nothing preventing the Bank from having a humanitarian consideration to settle the matter if it is satisfied that the amount due to it is paid by the judgment debtor. I make it also clear that it is only a suggestion and I cannot enforce the same on the Bank since they had already obtained a decree. But, the society which deals with the public should use their conscience and decide the matter

sympathetically. The delivery shall stand deferred for a period of six weeks and the Court may fix a date thereafter and deliver the property.

M.N. KRISHNAN, JUDGE.

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